

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

JOHN BADALAMENTI,

Plaintiff,

-against-

COUNTRY IMPORTED CAR CORP. d/b/a
BMW OF THE HAMPTONS AND MINI OF THE
HAMPTONS, LOCAL 210 UNITY WELFARE FUND,
TRUSTEES OF LOCAL 210 WELFARE FUND,
DOMINICK FORMISANO, as Plan Administrator of
Unity Welfare Fund, MICHAEL CARUSO and
VINCENT CARUSO,

Defendants.

ORDER
CV-10-4993(SJF)(WDW)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y

★ SEP 28 2011 ★

LONG ISLAND OFFICE

FEUERSTEIN, J.

X

Pending before the Court is the Report and Recommendation ("the Report") of Magistrate Judge William D. Wall, dated August 30, 2011, recommending that the motion of defendants Local 210 Unity Welfare Fund, Trustees of Local 210 Welfare Fund and Dominick Formisano, as plan administrator of the Unity Welfare Fund (collectively, "the Fund defendants") to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be denied. No objections have been filed to the Report. For the reasons stated herein, the Court accepts Magistrate Judge Wall's Report in its entirety.

I

Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See, Thomas v. Arn, 474 U.S. 140, 150,

106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a magistrate judge on a dispositive matter, to which no timely objection has been made, the district judge need only be satisfied that there is no clear error on the face of the record. See, Fed. R. Civ. P. 72(b); Johnson v. Goord, 487 F.Supp.2d 377, 379 (S.D.N.Y. 2007), aff'd, 305 Fed. Appx. 815 (2d Cir. Jan. 1, 2009); Baptichon v. Nevada State Bank, 304 F.Supp.2d 451, 453 (E.D.N.Y. 2004), aff'd, 125 Fed.Appx. 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

II

No party has filed any objections to Magistrate Judge Wall's Report. Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts Magistrate Judge Wall's Report in its entirety. The Fund defendants' motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is denied for the reasons set forth in the Report.

SO ORDERED.

Sandra J. Feuerstein
SANDRA J. FEUERSTEIN
United States District Judge

Dated: September 28, 2011
Central Islip, New York